**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE ANTONY DOMINIC**

**WEDNESDAY, THE 19TH DECEMBER 2007 / 28TH AGRAHAYANA 1929**

**WP(C).No. 17713 of 2007(H)**
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**PETITIONER:**
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**T.SREEKUMAR,**
**BHARATH PUBLICITY, ANAND BHAVAN,**
**KURUMANDALAM, PARAVOOR, KOLLAM.**

**BY ADV. SRI.GEORGE CHERIAN (THIRUVALLA)**

**RESPONDENTS:**
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**1. THE DIVISIONAL RAILWAY MANAGER,**
**SOUTHERN RAILWAY, TRIVANDRUM.**

**2. THE SENIOR DIVISIONAL COMMERCIAL**
**MANAGER, SOUTHERN RAILWAY, TRIVANDRUM.**

**3. DRISYA ADVERTISERS,**
**ADHITHIYA NAGAR, H.NO.78, KANNIMEL,**
**KAVANAD P.O., KOLLAM.**

**BY ADV. SRI.VARGHESE P.THOMAS, SR.SC,RAILWAYS**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 27/11/2007, THE COURT ON 19/12/2007 DELIVERED THE FOLLOWING:**

**WPC NO.17713/2007**

## APPENDIX

**PETITIONER'S EXHIBITS**

**EXT.P1: TRUE COPY OF THE PERMISSION LETTER DATED 5.11.1998 ISSUED BY THE RESPONDENT.**

**EXT.P2: TRUE COPY OF THE LETTER DATED 5.6.99 ISSUED BY THE RESPONDENT.**

**EXT.P3: TRUE COPY OF THE JUDGMENT IN WA NO.3332/01.**

**EXT.P4: TRUE COPY OF THE RECEIPT ISSUED BY DHANALAKSHMI ADVERTISEMENT DT.31.1.05.**

**EXT.P5: TRUE COPY OF TAX RECEIPT DT.6.1.07.**

**EXT.P6: TRUE COPY OF THE LETTER DATED 17.2.07 BY REGISTERED POST BY THE PETITIONER TO THE 2ND RESPONDENT.**

**EXT.P7: TRUE COPY OF THE LETTER DATED 31.5.07 BY REGISTERED SPEED POST BY THE PETITIONER.**

**EXT.P8: TRUE COPY OF THE HOARDING ADVERTISEMENT OF THE PETITIONER.**

**EXT.P9: TRUE COPY OF THE PHOTOGRAPHS.**

**EXT.P10: TRUE COPY OF the PHOTOGRAPHS**

**//TRUE COPY//**

**P.A. TO JUDGE**

**ANTONY DOMINIC, J.**
**==========**
**W.P.(C) NO. 17713 OF 2007 H**
**==========**

**Dated this the 19th day of December, 2007**

**J U D G M E N T**

The prayer sought for in this writ petition is for directing the respondents not to allot the hoarding created by the petitioner to any person including the 3rd respondent. The petitioner also seeks an order requiring respondents 1 and 2 to consider Exts. P6 and P7 representations submitted by him.

2. Petitioner claims to have erected a hoarding in the railway compound at Kollam some time in 1999. It is also his case that he was allowed to display advertisements for about two years. In 2000, in a tender that was invited by the Railways for erecting hoardings, though the petitioner was the sole tenderer, that was cancelled following Ext.P3 judgment of this court in WA No.3332/2001. It is stated that since 2004, petitioner had continued displaying advertisements based on an agreement with the beneficiary of the judgment in WA 3332/2001, Smt.Dhanalakshmi. Petitioner has produced as Exts. P4 and P5,

indicating the payment that were made to Smt.Dhanalakshmy, to whom the advertisement rights were issued pursuant to Ext.P3 judgment.

3. Petitioner submits that in 2007, he came to know that the railways are going to terminate the arrangement with Smt.Dhanalakshmy and thereupon filed Exts. P6 and P7 representations requesting for permitting him to continue the arrangement with him. He submits that while these representations are pending, his hoardings were removed on 4/6/07. It is contended that while allowing all other advertisers to retain their hoardings, the hoarding of the petitioner alone was removed and that the place has been alloted to the 3rd respondent. On these pleadings, petitioner seeks the reliefs mentioned earlier.

4. The Railways have filed a statement from which it is disclosed that they had permitted the petitioner to erect a hoarding for the period from 6/12/1998 and this continued till about 2002. It is stated that following Ext.P3 judgment of this court, contract for hoarding at Kollam was awarded to Smt.Dhanalakshmi, M/s Seematti Textiles, Kollam and that this was for the period 1/6/04 to 31/5/2007. According to them, they

are not concerned with the business transactions between Smt.Dhanalakshmi and other agencies and that on expiry of the contract with Smt.Dhanalakshmy on 31/5/07, all permissions that were granted for displaying the hoardings also stood terminated and the contractor was asked to remove the hoardings. It is stated that since the expiry of the previous contract, for the future period sites were alloted on the basis of first come first served basis to those who are willing to pay higher charges than the normal tariff. It is stated that on this basis, they have realised double the revenue. In so far as the hoarding of the petitioner is concerned, they would submit that the proposal from the petitioner was received by them only on 21/5/2007 , whereas based on a proposal that was received from M/s Drishya Advertisers, Adithya Nagar, Kollam, site was allotted to them and that the party had made remittance of Rs.2,18,867/- on 14/5/2007.

5. Thus, from the facts, it is obvious that when this writ petition was filed on 8/6/07, much earlier to that, the site in question was allotted to the 3rd respondent based on the proposal that was received and on the remittance that was made by them.

6. From the facts as stated above, it is obvious that for

the hoardings he displayed, there was no contract between the petitioner and the railways. Therefore, the petitioner cannot assert any claim as he did not have any privity of contract between himself and the railways. As his contract was only with Smt.Dhanalakshmi and as her contract with railways having been terminated on 31/5/2007, petitioner has no legal right to insist that he should be permitted to carry on the arrangement for any period thereafter.

7. Petitioner is not seeking an order directing that the railways should not allot the hoardings otherwise than by tender. On the other hand, what the petitioner was attempting is only to take advantage of the situation by making Exts. P6 and P7 representations to the railways requesting for allotment in his favour. It is the case of the railways that they have adopted the system of first come first served basis. In such an arrangement, petitioner has lost only because he made the proposal belatedly. From the statement, it is evident that the 3rd respondent made his proposal on 25/4/2007 and remitted the amount on 14/5/2007 whereas the petitioner made his proposal only on 21/5/07. Thus, it is only because of the delay on the petitioner's side that he could not successfully bid for the hoarding in

question. Further petitioner also took his chance in the direct allotment system adopted by the railways and lost out because his proposal was made belatedly.

8. It certainly is disturbing to note that the Undertaking like the railways are resorting to this kind of adhoc system in the matter of distributing their spaces for advertisement purposes. Being a Public Sector, it is obligatory on the part of the railways to ensure that they realise the best revenue as possible, that too in a most transparent method. As against the accepted method of open tenders, it is not been explained as to why railways have opted for the system of direct allotment and that too, on first come first serve basis. Needless to say that this arrangement will often lead to criticisms whether necessary or unnecessary and it is not a desirable tendency. This certainly is a matter for the railways to take into account atleast for their future guidance.

Writ petition will stand dismissed without any order as to costs.

**ANTONY DOMINIC, JUDGE.**

Rp